

**In The Matter Of:**  
*Hodell-Natco Industries, Inc. v.*  
*SAP America, Inc., et al.*

---

*Daniel J. Lowery*  
*Vol. 2*  
*February 9, 2012*

---

**NEXTGEN|REPORTING**

**Making Litigation Easier.**

[NextGenReporting.com](http://NextGenReporting.com)

PHILADELPHIA | 215.944.5500 NEW YORK CITY | 646.470.3976 PHOENIX | 623.824.2760 SILICON VALLEY | 650.799.8020

*Original File Lowery, Daniel J. - Vol. 2.txt*  
**Min-U-Script® with Word Index**

<p style="text-align: right;">Page 266</p> <p>1 Q. What was discussed on that call?</p> <p>2 A. The implementation it seems.</p> <p>3 Well, if Radio Beacon was on there, I'm sure</p> <p>4 it was about Radio Beacon. Paul Killingsworth</p> <p>5 was on there. Paula Hendley, whoever that is.</p> <p>6 I don't know who that is. And at LSi, we had</p> <p>7 everybody. Avery will send you a recap with</p> <p>8 the plan, so we must have been -- I don't know</p> <p>9 specifically. Everyone's in the boat. Radio</p> <p>10 Beacon and SAP are anxious to resolve and are</p> <p>11 supplying great people.</p> <p>12 Q. You don't recall who Paula</p> <p>13 Hendley was?</p> <p>14 A. I don't.</p> <p>15 Q. So your testimony, or would you</p> <p>16 agree with me that the installation and</p> <p>17 operation of the SAP Business One software at</p> <p>18 Hodell was a failure, correct?</p> <p>19 MR. STAR: Objection to form.</p> <p>20 THE WITNESS: No. I mean, they ran</p> <p>21 their business on it for two years.</p> <p>22 BY MR. LAMBERT:</p> <p>23 Q. You would agree with me it did</p> <p>24 not work as it was supposed to work, correct?</p> <p>25 MR. HULME: You mean at -- what point</p>	<p style="text-align: right;">Page 268</p> <p>1 A. They weren't going to fix the</p> <p>2 problem. They had to find something else to</p> <p>3 blame it on. I mean, we have documentation</p> <p>4 that SAP is not going to fix the problem.</p> <p>5 Probably the most legitimate one is from Miki</p> <p>6 Zilberstein.</p> <p>7 (Whereupon, Exhibit 61 was marked for</p> <p>8 identification.)</p> <p>9 THE WITNESS: Where we at here?</p> <p>10 September of 2007. Okay. Okay.</p> <p>11 MR. LAMBERT: What number is that?</p> <p>12 THE WITNESS: Sixty-one.</p> <p>13 BY MR. LAMBERT:</p> <p>14 Q. Have you reviewed Exhibit 61?</p> <p>15 A. Have I, yeah. I'm on it right</p> <p>16 now. I have seen it, right here.</p> <p>17 Q. What is -- what is Exhibit 61?</p> <p>18 A. It looks like it's a -- a message</p> <p>19 guide for field sales and partners.</p> <p>20 Q. Well, on the front, what is it?</p> <p>21 A. Pardon me?</p> <p>22 Q. It's an email from you to --</p> <p>23 A. Oh, it's an email from me to</p> <p>24 Kevin with an attachment, copying Otto. This</p> <p>25 was what is announced today, so on</p>
<p style="text-align: right;">Page 267</p> <p>1 in time are you talking about?</p> <p>2 THE WITNESS: Yeah.</p> <p>3 BY MR. LAMBERT:</p> <p>4 Q. Ever?</p> <p>5 A. Ever?</p> <p>6 Q. Right.</p> <p>7 A. Okay. Are you talking about SBO</p> <p>8 or In-Flight?</p> <p>9 Q. I'm talking about SAP Business</p> <p>10 One.</p> <p>11 A. I agree that the SAP Business One</p> <p>12 DI API problems were unacceptable.</p> <p>13 Q. And they were never fixed, right?</p> <p>14 A. Not to -- no. No.</p> <p>15 Q. When did the number of users on</p> <p>16 the SAP Business One system start being</p> <p>17 discussed between you and -- and SAP?</p> <p>18 A. As being a problem?</p> <p>19 Q. Yes.</p> <p>20 A. Oh, probably shortly after go</p> <p>21 live.</p> <p>22 Q. And why did it come up?</p> <p>23 A. In my opinion, it was a way for</p> <p>24 Kraus and Sotnick to run for cover.</p> <p>25 Q. Well, in what regard?</p>	<p style="text-align: right;">Page 269</p> <p>1 September 19th, 2007.</p> <p>2 Q. Why were you sending it to Otto</p> <p>3 and Kevin?</p> <p>4 A. Well, let's see. What does it</p> <p>5 say? Okay. My guess would be to let them</p> <p>6 know the new typical number of employees that</p> <p>7 they are recommending SAP Business One be sold</p> <p>8 into, which would be under 100, 10 to 100</p> <p>9 employees, fewer than 50 users. And this came</p> <p>10 out September 2007. So this -- SAP at this</p> <p>11 point was trying to prevent future Hodells</p> <p>12 from happening.</p> <p>13 Q. Okay. My question was, why did</p> <p>14 you send it to Otto and Kevin in September of</p> <p>15 2007?</p> <p>16 A. The kimono is open. I mean, they</p> <p>17 -- if I felt this was significant to know,</p> <p>18 they should have felt this was significant to</p> <p>19 know.</p> <p>20 Q. Okay.</p> <p>21 A. I found it interesting. I'm sure</p> <p>22 they found it interesting.</p> <p>23 Q. If you turn to the first page of</p> <p>24 that document, it's called a message guide for</p> <p>25 field sales partners --</p>

**In The Matter Of:**  
*Hodell-Natco Industries, Inc. v.*  
*SAP America, Inc., et al.*

---

*Daniel J. Lowery*  
*Vol. 4*  
*March 8, 2012*

---

**NEXTGEN|REPORTING**

**Making Litigation Easier.**

[NextGenReporting.com](http://NextGenReporting.com)

PHILADELPHIA | 215.944.5800 NEW YORK CITY | 646.470.3376 PHOENIX | 623.284.2750 SILICON VALLEY | 650.709.8020

*Original File Lowery, Daniel J. - Vol. 4.txt*  
*Min-U-Script® with Word Index*

<p style="text-align: right;">Page 832</p> <p>1 BY MR. LAMBERT:</p> <p>2 Q. Did not?</p> <p>3 MR. HULME: What is the question?</p> <p>4 THE WITNESS: It's my understanding --</p> <p>5 BY MR. LAMBERT:</p> <p>6 Q. I got it backwards.</p> <p>7 A. -- that Hodell did not do what?</p> <p>8 Q. You keep making reference to 100</p> <p>9 licenses, 80 that Hodell purchased and 20 that</p> <p>10 were given by SAP. And my question is, are</p> <p>11 you disregarding the 40 that it referenced on</p> <p>12 Exhibit 155?</p> <p>13 A. All right. I don't quite</p> <p>14 understand Exhibit 155, is what I guess I'm</p> <p>15 saying.</p> <p>16 Q. Okay.</p> <p>17 A. They got 80, and they paid for</p> <p>18 80. And then later on, after go live, they</p> <p>19 got another 20 from Hodell, or from SAP.</p> <p>20 Q. For free?</p> <p>21 A. For free. I guess. I was not</p> <p>22 involved in that.</p> <p>23 Q. So you don't have any knowledge</p> <p>24 of the 40 CRM user licenses --</p> <p>25 A. I really don't.</p>	<p style="text-align: right;">Page 834</p> <p>1 suggesting when you say that they were running</p> <p>2 their business on it?</p> <p>3 A. No. What I was suggesting is is</p> <p>4 we delivered our part of that contract.</p> <p>5 Q. Which was?</p> <p>6 A. In-Flight integrated into SAP</p> <p>7 Business One.</p> <p>8 Q. You don't feel any responsibility</p> <p>9 for the fact that Business One itself didn't</p> <p>10 work?</p> <p>11 MR. STAR: Objection to form.</p> <p>12 THE WITNESS: That was outside of our</p> <p>13 control. We had no access to the source code</p> <p>14 of Business One. And we tried everything</p> <p>15 humanly possible to -- to get it resolved.</p> <p>16 BY MR. LAMBERT:</p> <p>17 Q. Well, In-Flight was only useful</p> <p>18 to the extent that it was incorporated into</p> <p>19 Business One, correct?</p> <p>20 A. In-Flight --</p> <p>21 Q. Had no usefulness to Hodell on</p> <p>22 its own, correct?</p> <p>23 A. Without SAP?</p> <p>24 Q. Right.</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 833</p> <p>1 Q. -- referenced in Exhibit 155?</p> <p>2 A. I don't. And that's why I asked,</p> <p>3 wasn't -- I don't know for sure, but I kind of</p> <p>4 remember somebody asking me a question about</p> <p>5 Otto wanting a year-end tax thing or</p> <p>6 something.</p> <p>7 Q. You don't know for sure --</p> <p>8 A. I don't know for sure.</p> <p>9 Q. -- what that was for?</p> <p>10 A. I don't know for sure.</p> <p>11 Q. Okay.</p> <p>12 A. All I know for sure is they had</p> <p>13 80 and then 20.</p> <p>14 Q. You made several statements today</p> <p>15 and yesterday that Hodell was running its</p> <p>16 business on Business One, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Are you suggesting that in any</p> <p>19 way it's inappropriate for Hodell to</p> <p>20 eventually decide to abandon the Business One</p> <p>21 In-Flight software and move to a different</p> <p>22 package?</p> <p>23 A. Do I feel it's inappropriate for</p> <p>24 them to abandon it?</p> <p>25 Q. Well, is that what you're</p>	<p style="text-align: right;">Page 835</p> <p>1 Q. So that if Hodell wasn't running</p> <p>2 its business, could not run its business on</p> <p>3 Business One, In-Flight, in fact, would not</p> <p>4 deliver what was promised, correct?</p> <p>5 MR. STAR: Objection.</p> <p>6 THE WITNESS: In-Flight -- In-Flight</p> <p>7 was what?</p> <p>8 BY MR. LAMBERT:</p> <p>9 Q. Hodell -- if you agree with me</p> <p>10 that Hodell could not run its business on</p> <p>11 Business One as it functioned, which I think</p> <p>12 we're in agreement on, correct?</p> <p>13 MR. HULME: Objection, form.</p> <p>14 THE WITNESS: I don't understand it.</p> <p>15 BY MR. LAMBERT:</p> <p>16 Q. Do you agree with me that the</p> <p>17 performance of Business One was unacceptable</p> <p>18 at Hodell-Natco?</p> <p>19 A. I do.</p> <p>20 Q. Okay. Do you agree with me that</p> <p>21 Hodell-Natco had every right eventually to</p> <p>22 abandon Business One and move to a different</p> <p>23 software package?</p> <p>24 A. Sure.</p> <p>25 Q. Okay. I don't have anything</p>